

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

JUL 25 2005

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

EDWARD J. COSTA et al.,
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent;

BILL LOCKYER etc. et al.,
Real Party in Interest.

C050297
Sacramento County
No. 05CS00998

BY THE COURT:

The July 22, 2005, "Order Directing Issurance of Peremptory Writ of Mandate and Declaratory Relief," and the July 22, 2005, "Judgment Granting Petition for Writ of Mandate; Judicial Declaration," filed by the Sacramento County Superior Court, in *Lockyer v. McPherson*, Sacramento County No. 05CS00998, are temporarily stayed pending receipt of opposition and further order of this court. Real parties in interest may file informal opposition to this petition on or before July 29, 2005.

Given this temporary stay order, nothing prevents real party in interest Bruce McPherson, Secretary of State for the State of California, from complying with the public comment period specified in Elections Code section 9092 as to Proposition 77.

This order does not reflect any decision on the merits.

Dated: July 25, 2005

BLEASE, Acting P.J.

cc: See Mailing List



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

RICHARD M. FRANK
Chief Deputy Attorney General
Legal Affairs

July 25, 2005

Via Hand Delivery

Brad Clark
Assistant Secretary of State, Elections
Office of the Secretary of State
1500 11th Street
Sacramento, CA 95814

Re: Issuance of Ballot Title and Summary and Ballot Label for Proposition 77

Dear Mr. Clark:

In response to the stay issued earlier today by the Third District Court of Appeal in *Costa et al. v. Superior Court* (No. C050297), we enclose the ballot title and summary and ballot label for Proposition 77. As you know, the pending litigation over Proposition 77 arose because the proponents of the measure submitted one version of the initiative to the Attorney General for preparation of a title and summary, but then prepared and circulated a different version for collection of signatures. We believe, and we will continue to assert, that the proponents' action violated the California Constitution and that therefore neither version can be placed on the November 8, 2005, special election ballot. Nonetheless, in light of the stay, and pending a final determination by the appellate courts, we are now placed in the unprecedented and untenable position of having to determine which version of the initiative should receive a ballot title and summary and ballot label from our office.

Based on our review of applicable law and of the facts surrounding this matter, we believe we are obligated to issue a ballot title and summary and ballot label for the version of the measure that was submitted by the proponents to the Attorney General and attached to the certification issued by the Secretary of State. As you know, that version was posted on the Attorney General's web site, was forwarded to the Legislative Analyst for preparation of a fiscal analysis, was the subject of our circulating title and summary, and was submitted by the Secretary of State to the Legislature.

Brad Clark
Assistant Secretary of State
July 25, 2005

We do not believe we have a legal basis, absent a court order to the contrary, to issue a ballot title and summary and ballot label for the version of the measure that circulated to the voters. That version was never submitted to the Attorney General's Office by the proponents, was never forwarded to the Legislative Analyst's Office for preparation of a fiscal analysis as the law requires, and was not attached to the Secretary of State's certification package or forwarded to the Legislature.

Accordingly, enclosed is a ballot title and summary and ballot label for the version of the initiative submitted to our office by the proponents.

Although we have not prepared a title and summary and ballot label for the version of the initiative submitted by the proponents for circulation, we have had the opportunity to review this latter version in the context of the pending litigation and believe that it differs substantively from the version submitted to our office. And, if we were ordered to issue a ballot title and summary and ballot label for this latter version, it would be different from the one we are issuing.

Sincerely,

RICHARD M. FRANK
Chief Deputy Attorney General for Legal Affairs

cc: Counsel of Record in Case No. C050297